

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

FIDEL ROSALES,

Defendant and Appellant.

F068284

(Super. Ct. No. VCF177636A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Gary L. Paden, Judge.

Scott Concklin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Michael A. Canzoneri and Barton Bowers, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

* Before Kane, Acting P.J., Peña, J. and Smith, J.

When defendant Fidel Rosales was 16 years old, he was convicted of first degree murder and other crimes arising from a drive-by shooting. The trial court sentenced him to life without the possibility of parole for the murder, plus a consecutive 25 years to life for a firearm enhancement. (*People v. Rosales* (Oct. 5, 2012, F061036 [nonpub. opn.] at p. 2.)

Defendant appealed and we remanded to the trial court for resentencing in light of *Miller v. Alabama* (2012) ___ U.S. ___ [132 S.Ct. 2455]. (*People v. Rosales* (Oct. 5, 2012, F061036) at pp. 2, 44, 47.) On remand, in October 2013, the trial court resentenced defendant to 25 years to life for the murder, plus a consecutive 25 years to life for the firearm enhancement. The court stayed the terms on the other counts and enhancements.

On this appeal, defendant requests only that we modify his judgment to reflect that, pursuant to Penal Code section 3051, subdivision (b)(3), he will be entitled to a parole hearing during his 25th year of incarceration.¹ The parties agree that the California Supreme Court has approved the inclusion of a minimum term of imprisonment within a sentence, citing *People v. Jefferson* (1999) 21 Cal.4th 86 at page 101, fn. 3, which states: “By including the minimum term of imprisonment in its sentence, a trial court gives guidance to the Board of Prison Terms regarding the appropriate minimum term to apply, and it informs victims attending the sentencing

¹ All statutory references are to the Penal Code.

Enacted in 2013, section 3051, subdivision (b)(3) provides that “[a] person who was convicted of a controlling offense that was committed before the person had attained 18 years of age and for which the sentence is a life term of 25 years to life shall be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing, unless previously released or entitled to an earlier parole consideration hearing pursuant to other statutory provisions.” “‘Controlling offense’ means the offense or enhancement for which any sentencing court imposed the longest term of imprisonment.” (§ 3051, subd. (a)(2)(B).)

hearing of the minimum period the defendant will have to serve before becoming eligible for parole.” The People concede that the judgment should be modified, and we agree.

DISPOSITION

Defendant’s judgment is modified to reflect that he shall be entitled to a parole hearing during his 25th year of incarceration, as provided by section 3051, subdivision (b)(3). The clerk of the trial court is directed to prepare an amended abstract of judgment and forward certified copies to the appropriate entities. As so modified, the judgment is affirmed. We take judicial notice of our unpublished case, *People v. Rosales* (Oct. 5, 2012, F061036).